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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ARTURO PACHECO,

16 Defendant.

CASE NO. 2:20-cr-221 WBS

PLEA AGREEMENT

DATE: JULY 25, 2022

TIME: 9:00 A.M.

COURT: Hon. WILLIAM B. SHUBB

17
18 **I. INTRODUCTION**

19 **A. Scope of Agreement.**

20 The Indictment in this case charges the defendant with violations of Deprivation of Rights Under
21 Color of Law, in violation of 18 U.S.C. § 242 (Counts One and Two), and Falsification of Records in
22 Federal Investigation, in violation of 18 U.S.C. § 1519 (Counts Three and Four). This document
23 contains the complete plea agreement between the United States Attorney's Office for the Eastern
24 District of California (the "government") and the defendant regarding this case. This plea agreement is
25 limited to the United States Attorney's Office for the Eastern District of California and cannot bind any
26 other federal, state, or local prosecuting, administrative, or regulatory authorities.

27 **B. Court Not a Party.**

28 The Court is not a party to this plea agreement. Sentencing is a matter solely within the

discretion of the Court, and the Court may take into consideration any and all facts and circumstances concerning the criminal activities of defendant, including activities which may not have been charged in the Indictment. The Court is under no obligation to accept any recommendations made by the government, and the Court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this plea agreement.

If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this plea agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

II. DEFENDANT'S OBLIGATIONS

A. Guilty Plea.

The defendant will plead guilty to each Count in the Indictment. The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit A are accurate.

The defendant agrees that this plea agreement will be filed with the Court and become a part of the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his pleas should the Court not follow the government's sentencing recommendations.

The defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this Agreement generally.

B. Remand.

The defendant acknowledges that to remain out of custody after the entry of his guilty plea he must establish by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of another person or the community if released. 18 U.S.C. § 3143.

1 **C. Restitution.**

2 The defendant agrees the conduct to which he is pleading guilty requires mandatory restitution
3 pursuant to the Mandatory Restitution Act, 18 U.S.C. § 3663, and agrees to pay restitution to the victims
4 in the factual basis or their estates in an amount between 1,000 and 2,000,000 dollars per victim.
5 Restitution payments shall be by cashier's or certified check made payable to the Clerk of the Court.

6 Defendant agrees that all criminal monetary penalties imposed by the court, including restitution,
7 will be due in full immediately at time of sentencing and subject to immediate enforcement by the
8 government. Defendant agrees that any payment schedule or plan set by the court is merely a minimum
9 and does not foreclose the United States from collecting all criminal monetary penalties at any time
10 through all available means.

11 Defendant further agrees that he will not seek to discharge any restitution obligation or any part
12 of such obligation in any bankruptcy proceeding.

13 Defendant shall not sell, encumber, transfer, convey, or otherwise dispose of any of his assets
14 without prior written consent of the United States Attorney, except that the defendant may sell, transfer
15 or convey personal property (including used vehicles and personal items, but not financial instruments,
16 ownership interests in business entities or real property) with an aggregate value of less than \$5,000.

17 **D. Fine.**

18 The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a
19 fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively
20 prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury
21 to the Probation Officer and the government in advance of the issuance of the draft Presentence
22 Investigation Report, along with supporting documentation. The government retains the right to oppose
23 the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered
24 by the Court, up to the statutory maximum fine for the defendant's offenses.

25 **E. Special Assessment.**

26 The defendant agrees to pay a special assessment of \$400 at the time of sentencing by delivering
27 a check or money order payable to the United States District Court to the United States Probation Office
28 immediately before the sentencing hearing. The defendant understands that this plea agreement is

1 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

2 **F. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.**

3 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
4 his plea, this plea agreement is voidable at the option of the government. If the government elects to
5 void the agreement based on the defendant's violation, the government will no longer be bound by its
6 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
7 forth herein. A defendant violates the plea agreement by committing any crime or providing or
8 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
9 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
10 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
11 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
12 counsel, also constitutes a violation of the plea agreement. The government also shall have the right:
13 (1) to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any
14 counts that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
15 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
16 any federal criminal violation of which the government has knowledge. The decision to pursue any or
17 all of these options is solely in the discretion of the United States Attorney's Office.

18 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
19 defenses that the defendant might have to the government's decision. Any prosecutions that are not
20 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
21 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
22 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
23 The defendant agrees not to raise any objections based on the passage of time with respect to such
24 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
25 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
26 of the date of this plea agreement. The determination of whether the defendant has violated the plea
27 agreement will be under a probable cause standard.

28 In addition, (1) all statements made by the defendant to the government or other designated law

1 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
 2 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
 3 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
 4 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
 5 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
 6 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
 7 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

8 **G. Asset Disclosure.**

9 The defendant agrees to make a full and complete disclosure of his assets and financial
 10 condition, and will complete the United States Attorney's Office's "Authorization to Release
 11 Information" and "Financial Disclosure Statement" within three (3) weeks from the entry of the
 12 defendant's change of plea, including supporting documentation. The defendant also agrees to have the
 13 Court enter an order to that effect. The defendant understands that if he fails to complete truthfully and
 14 provide the described documentation to the United States Attorney's Office within the allotted time, he
 15 will be considered in violation of the agreement, and the government shall be entitled to the remedies set
 16 forth in section II.F above.

17 Defendant expressly authorizes the United States to immediately obtain a credit report to
 18 evaluate defendant's ability to satisfy any monetary penalty imposed by the court. Defendant also
 19 authorizes the U.S. Attorney's Office to inspect and copy all financial documents and information held
 20 by the U.S. Probation Office.

21 **III. THE GOVERNMENT'S OBLIGATIONS**

22 **A. Dismissals/Other Charges.**

23 The government agrees not to bring any other charges arising from the conduct outlined in the
 24 Factual Basis attached hereto as Exhibit A.

25 **B. Recommendations.**

26 **1. Incarceration Range.**

27 The government will recommend that the defendant be sentenced to no more than 151
 28 months in prison.

2. Acceptance of Responsibility.

The government will recommend a two-level reduction for acceptance of responsibility if the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1. This includes the defendant timely meeting with and assisting the probation officer in the preparation of the pre-sentence report, so that there are no delays in the pre-sentence report preparation, being truthful and candid with the probation officer, and not otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

C. Use of Information for Sentencing.

The government is free to provide full and accurate information to the Court and Probation, including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement bars the government from defending on appeal or collateral review any sentence that the Court may impose.

IV. ELEMENTS OF THE OFFENSE

At a trial, the government would have to prove beyond a reasonable doubt the following elements of the offenses to which the defendant is pleading guilty:

1. Counts One and Two, Deprivation of Rights Under Color of Law, in violation of 18 U.S.C. § 242:

First, the defendant was acting under color of law;

Second, the defendant deprived the victim (Victim 1 in Count 1 and Victim 2 in Count 2) of a right which is secured or protected by the Constitution and laws of the United States—in this case, the right to be free from the use of unreasonable force under the Eighth Amendment;

Third, the defendant acted willfully, intending to deprive the victim of this right;

Fourth, the victim suffered bodily injury from the defendant's act; and

Fifth, the act occurred within the State of California.

2. Counts Three and Four, Falsification of Records in Federal Investigation in violation of 18 U.S.C. § 1519:

First, the defendant knowingly altered, destroyed, concealed, or falsified a record, document or

1 tangible object; and

2 Second, the defendant acted with the intent to impede, obstruct or influence an actual or
3 contemplated investigation of a matter within the jurisdiction of any department or agency of the United
4 States, to wit, the United States Department of Justice.

5 The defendant fully understands the nature and elements of the crimes charged in the Indictment
6 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
7 his attorney.

8 V. MAXIMUM SENTENCE

9 A. Maximum Penalty.

10 The maximum sentence that the Court can impose as to Counts One and Two is 10 years in
11 prison per count, a fine of up to \$250,000 per count, a three-year period of supervised release per count
12 and a special assessment of \$100 per count. As to Counts Three and Four, the maximum sentence the
13 Court can impose is 20 years in prison per count, a fine of up to \$250,000 per count, a three year period
14 of supervised release per count and a special assessment of \$100 per count. The Court can impose a
15 consecutive sentence where the total maximum prison term would be 60 years in prison, and a fine of up
16 to \$1,000,000.

17 By signing this plea agreement, the defendant also agrees that the Court can order the payment of
18 restitution for the full loss caused by the defendant's wrongful conduct. The defendant agrees, as noted
19 above, that he will not attempt to discharge in any present or future bankruptcy proceeding any
20 restitution imposed by the Court.

21 B. Violations of Supervised Release.

22 The defendant understands that if he violates a condition of supervised release at any time during
23 the term of supervised release, the Court may revoke the term of supervised release and require the
24 defendant to serve up to two additional years imprisonment.

25 VI. SENTENCING DETERMINATION

26 A. Statutory Authority.

27 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
28 must take them into account when determining a final sentence. The defendant understands that the

Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines and must take them into account when determining a final sentence. The defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. The defendant further understands that the Court, after consultation and consideration of the Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

B. Stipulations Affecting Guideline Calculation.

The government and the defendant agree that there is no material dispute as to the following sentencing guidelines variables and therefore stipulate to the following:

As to **Count 1 (and Count 3):**

Offense Characteristic	Guidelines Section	Offense Level Adjustment
Base offense level	2H1.1(a)(1)/2A2.2	14
Bodily Injury (pepper spraying Victim 1 in the face at close range)	2A2.2(b)(3)(A) & 1B1.1, App. Note 1	3
Color of Law	2H1.1(b)(1)(B)	6
Vulnerable Victim (Victim 1 was an EOP inmate)	3A1.1(b)(1)	2
Restraints (locked in a prison cell)	3A1.3	2
Obstruction	3C1.1	2
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Count 3 groups with Count 1 and is accounted for in the two-level obstruction enhancement. See U.S.S.G. § 3C1.1, App. Note 8.

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As to **Count 2 (and Count 4)**:

Offense Characteristic	Guidelines Section	Offense Level Adjustment
Base offense level	2H1.1(a)(1)/2A2.2	14
Permanent or Life-Threatening Injury (pulling Victim 2's legs out from underneath him over a concrete floor while Victim 2's hands were handcuffed behind his back so there was no way for him to avoid smashing his head, resulting in a substantial risk of permanent or life threatening injury)	2A2.2(b)(3)(A) & 1B1.1, App. Note 1	7
Color of Law	2H1.1(b)(1)(B)	6
Vulnerable Victim (Victim 2 was an EOP inmate)	3A1.1(b)(1)	2
Restraints (handcuffed hands behind Victim 2's back)	3A1.3	2
Obstruction	3C1.1	2
		33

Count 4 groups with Count 2 and is accounted for in the two-level obstruction enhancement. See U.S.S.G. § 3C1.1, App. Note 8.

Grouping:

29 is four levels less than 33. As a result, one unit is counted for Group 1 and one unit for Group 2 for a total of two units. U.S.S.G. § 3D1.4. Two units results in a two-level increase to the offense level of the group with the highest offense level. *Id.* Therefore, the offense level becomes 35.

Acceptance of Responsibility:

See paragraph III.B.2. The parties further agree that the defendant does not qualify for a third-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(b). The government expended substantial resources preparing for trial that included conducting pre-trial interviews of almost all of the likely witnesses, drafting jury instructions and other trial documents, identifying exhibits, and other trial preparation.

Criminal History:

The parties estimate, but do not stipulate, that the defendant's criminal history category will be I.

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Sentencing Range:

Based on the stipulations above and the defendant's estimated criminal history category, the parties estimate that the Guidelines range will be **135 to 168 months**. The defendant understands that if the criminal history category differs from the parties' estimate, his Guidelines sentencing range may differ from that set forth here.

Departures or Other Enhancements or Reductions:

The parties agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"), or cross-references, except that the government may move for a departure or an adjustment based on post-plea obstruction of justice (§3C1.1). Both parties agree not to move for, or argue in support of, any departure from the Sentencing Guidelines, or any deviance or departure from the Sentencing Guidelines.

The defendant may recommend to the Court, through a variance only under 18 U.S.C. § 3553(a), that he should receive a sentence of no less than 121 months in prison. The government may oppose that recommendation. The defendant further acknowledges that if he requests or suggests in any manner a sentence of less than 121 months in prison, either directly or through counsel, that he will be in violation of the plea agreement. The government's remedies and remaining obligations in this agreement shall be as outlined in paragraph II.F, above. The government likewise retains the right to argue for a sentence of 151 months even if the Court calculates the guidelines in a manner different than is set forth in the stipulations and estimates above.

VII. WAIVERS**A. Waiver of Constitutional Rights.**

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be compelled to incriminate himself.

B. Waiver of Appeal and Collateral Attack.

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his pleas, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not exceed the statutory maximums for the offenses to which he is pleading guilty. The defendant understands that this waiver includes, but is not limited to, any and all constitutional and/or legal challenges to the defendant's conviction and guilty plea, including arguments that the statutes to which defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts attached to this agreement is insufficient to support the defendant's pleas of guilty. The defendant specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence the defendant receives, the defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the guilty pleas, convictions, or sentence, except for non-waivable claims.

Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever attempts to vacate his pleas, dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.F herein.

C. Waiver of Attorneys' Fees and Costs.

The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the investigation and prosecution of all charges in the above-captioned matter and of any related allegations (including without limitation any charges to be dismissed pursuant to this plea agreement and any charges previously dismissed).

VIII. ENTIRE PLEA AGREEMENT

Other than this plea agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel:

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated:

July 21, 2022



DAVID FISCHER
Attorney for Defendant

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1 **B. Defendant:**

2 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
3 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
4 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
5 case. No other promises or inducements have been made to me, other than those contained in this plea
6 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.
7 Finally, I am satisfied with the representation of my attorney in this case.

8 Dated: *July 21, 2022*



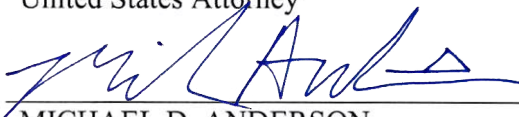
ARTURO PACHECO
Defendant

11 **C. Attorney for United States:**

12 I accept and agree to this plea agreement on behalf of the government.

13 Dated: July 21, 2022

14 PHILLIP A. TALBERT
United States Attorney

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MICHAEL D. ANDERSON
ROSANNE L. RUST
Assistant United States Attorneys

EXHIBIT "A"**Factual Basis for Pleas**

In 2016, the defendant Arturo Pacheco was a California Department of Corrections and Rehabilitation (CDCR) correctional officer. Pacheco worked at CSP-Sacramento, a prison located in Folsom, California.

Before becoming a CDCR correctional officer, PACHECO attended the CDCR Academy for cadets. While a cadet, PACHECO received training on several topics including, but not limited to, what "use of force" is, when it is appropriate, and how and why to properly write truthful and complete reports. PACHECO also learned that the CDCR has a zero tolerance policy for what is known as the "code of silence" or the "Green Wall," which is the idea that correctional officers will not inform supervisors or authorities of misconduct committed by another correctional officer, but will instead protect each other.

The Bill of Rights to the United States Constitution guarantees many individual rights and liberties. Investigations into potential federal civil rights violations, including offenses that involve violence committed "under the color of law," fall within the jurisdiction of the Federal Bureau of Investigation ("FBI") and the U.S. Department of Justice. Attempts to obstruct known or potential federal investigations into color of law violations can themselves constitute violations of federal criminal law.

The September 15, 2016, Assault (Count 2)

Despite his training, on September 15, 2016, PACHECO willfully and intentionally injured Victim 2, an inmate at CSP-Sacramento, by using excessive or unnecessary force. PACHECO then wrote a false report to hide his conduct and influenced his partner, Ashely M. Aurich, *charged elsewhere in case number 2:20-cr-219 WBS*, to do the same.

Specifically, PACHECO's sergeant, Sergeant 1, told PACHECO to move Victim 2 from a cell in Building 6A to a cell in Building 7A. PACHECO told Aurich, and they walked to Building 6A to get Victim 2. When they arrived, Correctional Officer 2 was there to assist if necessary. PACHECO handcuffed Victim 2's hands behind Victim 2's back while Victim 2 complained about the move. The three correctional officers began to escort Victim 2 on foot to Building 7A.

During the escort, PACHECO positioned himself on the left side of Victim 2, holding his left arm. Aurich was on the right side of Victim 2, and Correctional Officer 2 was following closely behind PACHECO and Aurich. When they arrived at Building 7A, the building's control booth officer let them inside. Shortly after entering and just inside the rotunda area, Victim 2 stopped walking and stiffened his torso. In response, PACHECO released his grip on Victim 2's left arm, bent down and wrapped his arms around Victim 2's legs. While Victim 2 still had his hands handcuffed behind his back, PACHECO lifted Victim 2's legs and pulled them quickly backwards towards him. PACHECO's use of force caused Victim 2 to fall violently forward to the concrete floor where Victim 2 struck his face and upper torso. The impact of Victim 2's head striking the concrete floor caused Victim 2 to break his jaw and several teeth. Victim 2 also injured his right shoulder in a failed attempt to cushion his fall as his hands were still handcuffed behind his back.

After Victim 2 crashed to the floor, Aurich sounded the alarm, and several other correctional officers, including Sergeant 1 and Correctional Officer 4, responded to Building 7A. Correctional Officer 4 relieved PACHECO and he and Correctional Officer 5 took Victim 2 to the medical treatment area of CSP-Sacramento. Medical staff attended to Victim 2 and determined Victim 2 needed to be sent to UC Davis Medical Center to receive more treatment for his injuries than they could offer, including fixing Victim 2's broken jaw and repairing a through and through wound in Victim 2's chin.

At UC Davis Medical Center, Victim 2 received medical care, underwent medical procedures, and appeared to be medically stable. However, approximately two days later, while taking a shower in his hospital room, Victim 2 suffered a pulmonary embolism and, despite the efforts of medical staff to revive him, died.

The September 15, 2016, Cover-up (Count 4)

After PACHECO was relieved, Sergeant 1 sent out an email to all of the officers s/he observed in Building 7A during the incident. This indicated they needed to write their crime incident reports on CDCR form 837. To write his report, PACHECO returned to Building 7A where he sat in an office at a computer, across from Aurich. PACHECO told Aurich they were going to keep their reports “in house,” meaning they would draft and submit consistent, false descriptions of what action Victim 2 took to supposedly justify PACHECO’s use of force and they would lie about the use of force PACHECO actually used. PACHECO and Aurich then lied about how Victim 2 allegedly stopped moving, then spun to his left and lunged forward, and supposedly broke free of PACHECO’s escort. They then wrote that PACHECO took Victim 2 to the ground in a controlled manner, when, in truth, PACHECO swept Victim 2’s legs out from underneath him, causing him to smash his head against the concrete.

PACHECO also told Aurich he was leaving Correctional Officer 2 out of his report, and she should do the same in hers. The reason the two of them left Correctional Officer 2 out of their reports was to prevent Correctional Officer 2 from submitting an accurate report regarding PACHECO’s assault on Victim 2, which would describe PACHECO’s use of excessive or unnecessary force and how Victim 2 was not actively resisting in a manner that would have warranted PACHECO’s conduct.

In fact, Correctional Officer 2 did draft a report shortly after the assault, and in his report, Correctional Officer 2 did document Victim 2’s actions and PACHECO’s use of excessive or unnecessary force against Victim 2. Correctional Officer 2 never submitted his draft report, however, because PACHECO told Correctional Officer 2 not to. Sergeant 1 also never followed up with Correctional Officer 2 to obtain a copy of his report although part of the response supervisor’s duties are to ensure that each correctional officer who witnessed “use of force” or used force submits an accurate report describing why force was used and what type of force was used, among other things. Sergeant 1 also told Correctional Officer 4 to leave Correctional Officer 2 out of Correctional Officer 4’s report because Correctional Officer 2 and PACHECO were involved in a “use of force” incident the week prior and it looked bad to have them involved in another incident so close in time. Correctional Officer 4 followed this order without question.

PACHECO also called Correctional Officer 4 after the incident with Victim 2 and PACHECO told Correctional Officer 4 to keep Correctional Officer 2 out of Correctional Officer 4’s report. PACHECO told Correctional Officer 4 that Victim 2 “pissed [him] off”, so PACHECO “dumped” Victim 2.

On or about September 16, 2016, PACHECO signed and submitted his final, false report regarding the incident with Victim 2.

The Discovery of the May 19, 2016, OC Spray Assault and False Report (Counts 1 and 3)

After Victim 2 died, an investigation was conducted into the officers’ conduct. During the course of the investigation, investigators uncovered another assault and false report by PACHECO.

On or about May 19, 2016, PACHECO found Victim 1 in his cell with a broken window. Rather than try to clean up the cell and issue a rules violation to Victim 1 for breaking the glass, PACHECO instead told Victim 1 to move toward the window of his cell, turn around, and open his eyes. When Victim 1 complied with that order, PACHECO sprayed Victim 1 with OC (pepper) spray at a range of approximately three feet. Victim 1 was not resisting in any way and had been fully compliant; therefore, any use of force at that time was unnecessary and unlawful.

1 After spraying Victim 1, an alarm sounded. Correctional Officer 6 responded to Victim 1's cell.
2 When Correctional Officer 6 arrived, Correctional Officer 6 saw Victim 1's face covered in orange OC
3 spray, and he could smell OC spray in the air. Correctional Officer 6 also saw Victim 1 struggling in
4 pain. The OC spray caused Victim 1 to experience an extreme burning sensation, physical pain and
5 temporary blindness, and Victim 1 had to be medically evaluated for any damage to his eyes.

6 After leaving work that evening, PACHECO sent a copy of his false draft incident report to a
7 friend via text message, and he bragged about "fuck[ing] up" Victim 1. In his draft report, PACHECO
8 lied by stating that Victim 1 was threatening to kill himself and threatening PACHECO and that is why
9 PACHECO sprayed Victim 1 with OC spray. PACHECO also lied about spraying Victim 1 with OC
10 spray from at least 6 feet away, which is the recommended distance, to avoid causing soft tissue damage
11 to the eyes.

12 PACHECO continued with additional text messages to his friend remarking how "funny" his
13 violence towards Victim 1 was and that PACHECO "just wanted to spray him [Victim 1]", so he
14 "[f]ucken hosed him". PACHECO further stated that "[i]t's all about how u write ur report" and "plus
15 ur partners have ur back." As PACHECO remarked, "[b]lood, broken glass, n just u n ur partners. . .
16 Green light!"

17 On or about May 20, 2016, PACHECO signed and submitted his final, false report regarding the
18 incident with Victim 1.

19 The conduct set forth above is not meant to be exhaustive and is merely an example of
20 PACHECO's conduct.

21 I have reviewed the entire factual basis in Exhibit A above and, as far as my own conduct is
22 concerned, I adopt it as my own true statement.

23 DATED: July 21, 2022

24 
25 ARTURO PACHECO
26 Defendant